

BEFORE THE MISSISSIPPI ETHICS COMMISSION

THELBERT LESURE

COMPLAINANT

VS.

PUBLIC RECORDS CASE NO. R-19-022

CITY OF HOLLY SPRINGS

RESPONDENT

FINAL ORDER

This matter came before the Mississippi Ethics Commission through a Public Records Complaint filed by Thelbert Lesure against the City of Holly Springs. (the “city”) The city filed a response to the complaint by and through its attorney. The Ethics Commission has jurisdiction over this matter pursuant to Section 25-61-13, Miss. Code of 1972. In accordance with Rule 5.6, Rules of the Mississippi Ethics Commission, the hearing officer prepared and presented a Preliminary Report and Recommendation to the Ethics Commission at its regular meeting on July 12, 2019. The respondent did not object to the Preliminary Report and Recommendation and has thereby waived a right to a hearing on the merits. Accordingly, the hearing officer enters this Final Order in accordance with Rule 5.6, Rules of the Mississippi Ethics Commission.

I. FINDINGS OF FACT

1.1 On May 22, 2019, Thelbert Lesure submitted a public records request to the City of Holly Springs to the City Clerk’s office specifically requesting:

[A] copy of the video footage from the video surveillance cameras mounts on the outside and inside of city hall. The date of the footage requested is 5/20/19. The time of the footage requested is all footage captured between the hours of 10:30 am and 12 pm.

1.2 The city attorney, Shirley Byers, states in the city’s response that on June 5, 2019 she verbally informed Mr. Lesure that she was in the process of obtaining the video, but “because of its nature it will take longer than the 14-day period.” To date, the city has not provided a copy of the video requested by Mr. Lesure. Aggrieved, Mr. Lesure filed this public records complaint with the Ethics Commission on June 12, 2019.

1.3 In the city’s response filed with the commission, Ms. Byers contends that “the City did not illegally deny or in any way attempt to avoid responding to the subject request.” However, the city “acknowledges that the requested security camera footage is accessible per the Public Records Act” and explains that “due to my schedule and a federal trial the following week in Oxford, Mississippi, I was delayed in obtaining the footage/information from City personnel concerning the download.” When Ms. Byers finally attempted to download the video (or instructed city personnel to download the video) she discovered that the video footage had been automatically deleted by the system. Ms. Byers provided a written denial letter to Mr. Lesure on June 19, 2019, stating: “Please be advised that City personnel attempted to download the security camera footage on the date and time in question. However, the video footage had been automatically deleted by the system. Therefore, the City has no footage from the surveillance

cameras in or around City Hall for your requested specification.” In lieu of the requested video, Ms. Byers provided Mr. Lesure a body-cam video by an officer on the scene from 10:45 am to 12 pm.

1.4 In a rebuttal, Mr. Lesure states that he requested the video footage because it would have shown the city’s Mayor, Kelvin Buck, assaulting him, and that the body-cam video footage recorded events only after the incident. He specifically alleges Ms. Byers willfully neglected to secure the video footage, and the city’s delayed response allowed for the video he requested to be automatically deleted.

II. CONCLUSIONS OF LAW

2.1 The Mississippi Public Records Act of 1983 (the “Act”) declares that public records shall be available for inspection or copying by any person unless a statute or court decision “specifically declares” a public record to be confidential, privileged, or exempt. Section 25-61-5(1)(a) mandates that “[n]o public body shall adopt procedures which will authorize the public body to produce or deny production of a public record later than seven (7) working days from the date of receipt of the request for the production of the record.”

2.2 Section 25-61-5(1)(b) allows up to (14) fourteen working days for production of public records when the public body provides a “written explanation to the person making the request stating that the record requested will be produced and specifying with particularity why the records cannot be produced within the seven-day period.” Production of public records beyond fourteen (14) working days is allowed only upon “mutual agreement of the parties.” Section 25-61-5(1)(b).

2.3 As a result, within seven working days of receiving a public records request, a public body should do one of the following to avoid unintentionally violating the Act:

- (a) Provide the record;
- (b) Acknowledge that the public body has received the request and provide [in writing] a reasonable estimate of the time and costs it will require to fully respond, not to exceed fourteen working days;
- (c) Seek a clarification of the request; or
- (d) Deny the request. A public body's failure to provide a written denial is a violation of the act. See Section 25-61-5(3).

Comment 4.3(4), Rule 4, Mississippi Model Public Records Rules.

2.4 That is, written denials (specifying the specific exemption relied upon) must occur within seven working days after receiving the request. Alternatively, within seven working days after receiving the request, a public body must either provide (1) records responsive to the request or, (2) a written statement explaining why the records cannot be provided within seven working days and a reasonable estimate of the time and costs it will take to fully respond to the request (with production of the documents not to exceed fourteen days from the date of receipt of the request). Again, production of public records beyond fourteen working days is only allowed with the mutual consent of the parties. See Public Records Case No. R-18-030.

2.5 Based on the record before the Ethics Commission, it appears the city attorney untimely and verbally responded to Mr. Lesure on June 5, 2019 – nine working days after the city received Mr. Lesure’s request (accounting for the Memorial Day holiday) – to inform Mr. Lesure that additional time was needed by the city to respond. This verbal response violated the Public Records Act because (1) it was untimely, that is outside the statutorily allowed seven working day period; (2) it was not in writing, as required by Section 25-61-5(b); and (3) it failed to specify “with particularity why the records cannot be produced within the seven-day period.” Id.

2.6 Additionally, the city attorney provided an untimely written denial to Mr. Lesure on June 19, 2019 (and only after he filed a Public Records Complaint with the Ethics Commission) – nineteen working days after the city received Mr. Lesure’s request and after the requested video was deleted. Had the city followed the timing dictated by the Public Records Act, it is likely that the requested video footage would not have been deleted. As a result, the city violated the Public Records Act by untimely responding to and denying Mr. Lesure’s request for video footage.

2.7 Section 25-61-15 states that “[a]ny person who shall deny to any person access to any public record which is not exempt from the provisions of this chapter or who charges an unreasonable fee for providing a public record may be liable civilly in his personal capacity in a sum not to exceed One Hundred Dollars (\$100.00) per violation, plus all reasonable expenses incurred by such person bringing the proceeding.” The untimely response and denial of Mr. Lesure’s public records request is a violation of the Act which can result in the imposition of a civil penalty against the individuals who are responsible for the denial. Based on the record in this case, Shirley Byers was responsible for responding to Mr. Lesure’s request. Her failure to respond timely to Mr. Lesure’s request, as required by statute, allowed for the deletion of the requested video and resulted in her subsequent denial of the request based on the deletion of that video.

III. CONCLUSION

WHEREFORE, IT IS HEREBY ORDERED as follows:

3.1 The Ethics Commission finds that the City of Holly Springs violated Section 25-61-5 by failing to timely respond to Mr. Thelbert Lesure’s public records request.

3.2 The Ethics Commission finds that Shirley Byers, City Attorney for the City of Holly Springs, violated Section 25-61-5, by untimely responding to Mr. Thelbert Lesure’s public records request, which resulted in the deletion of the requested public record, namely the video recording at city hall dated May 20, 2019.

3.3 The Ethics Commission imposes a civil penalty in the amount of \$100.00 against Shirley Byers, in her personal capacity, for the violations enumerated herein. The penalty shall be paid to the General Fund of the State of Mississippi upon receipt of the Final Order in this matter.